

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
Connect America Fund)	WC Docket No. 10-90
)	
A National Broadband Plan for Our Future)	GN Docket No. 09-51
)	
Establishing Just and Reasonable Rates for Local)	
Exchange Carriers)	WC Docket No. 07-135
)	
High-Cost Universal Service Support)	WC Docket No. 05-337
)	
Developing an Unified Intercarrier Compensation)	
Regime)	CC Docket No. 01-92
)	
Federal-State Joint Board on Universal Service)	CC Docket No. 96-45
)	
Lifeline and Link-Up)	WC Docket No. 03-109
)	
Universal Service Reform – Mobility Fund)	WT Docket No. 10-208

PETITION FOR WAIVER OF WINDY CITY CELLULAR, LLC

**COMMENTS OF
ALEXICON TELECOMMUNICATIONS CONSULTING**

INTRODUCTION

Alexicon Telecommunications Consulting (Alexicon) hereby submits its Comments to the Federal Communications Commission (Commission) in response to the Commission's request for comments on the Petition for Waiver of Universal Service Rules (Petition) filed by Windy City Cellular, LLC (WCC).¹

Alexicon provides professional management, financial and regulatory services to a variety of small rate-of-return Incumbent Local Exchange Carriers (ILECs) who serve diverse geographical areas characterized by rural, insular or Native American Tribal Lands. These ILECs, similar to most other small rate-of-return regulated ILECs, currently provide a wide range of technologically advanced services to their customers. These companies, through participation in various State and Federal high cost funding programs, and with their continued investment in network infrastructure, are providing customers in rural, insular and Tribal areas with services equal to or greater than urban areas, and at comparable pricing. Furthermore, these ILECs have been committed to providing their customers with innovative solutions, by adapting technologies that fit rural America, including Broadband and IP-enabled services. Alexicon works for small companies in Alaska, and as such has first-hand knowledge of the high cost areas Alaska companies serve and the sometimes severe conditions under which these companies operate.

SUMMARY

Alexicon supports WCC's petition for waiver of the Commission's rule limiting support to \$250 per line per month. WCC is a wireless Competitive Eligible Telecommunications Carrier (CETC), duly certified by the Regulatory Commission of Alaska (RCA), that serves some of the most remote and high cost areas in Alaska. In some portions of its service area, it is the only source of voice services. WCC has provided ample evidence to support its claim that application of this rule would be extremely detrimental to the customers it serves and to the economic conditions in the area it serves in general. Based on the evidence contained in WCC's Petition,

¹ Windy City Cellular, LLC Petition for Waiver filed in WC Docket 10-90, GN Docket 09-51, WC Docket 07-135, WC Docket 05-337, CC Docket 01-92, CC Docket 96-45, WC Docket 03-109; WT Docket 10-208

the Commission must act immediately in order to avoid what are likely to be disastrous consequences.

I. WCC Demonstrated the Need for Support Above the Amount Allowed by 54.307(e)

WCC requests a waiver of 47 CFR 54.307(e), which was adopted as a part of the Commission's overhaul of its universal service and intercarrier compensation rules.² Section 54.307(e) replaces the Commission's former identical support rule that was applicable to Competitive Eligible Telecommunications Carrier (CETC) receipt of federal USF with a new regime that freezes support for CETCs at the lower of 2011 levels or an amount equal to \$3,000 per line.

Furthermore, this change to the identical support rule was to take place effective January 1, 2012 – a mere six weeks after the release of the *ICC/USF Order*.³ The timing of the effective date of 54.307(e) gave WCC no chance to adapt to the fact that its support would be slashed by 84%⁴, and is thus a flash cut of the type the Commission vowed not to implement.⁵

WCC painstakingly provides the Commission with sufficient evidence that complies with the standards for waiver adopted and explained in the *ICC/USF Order*.⁶ However, Alexicon will focus on two of the criteria that demonstrate WCC's extraordinary need for the waiver it seeks. First, the new rule (47 CFR 54.307(e)) will cause WCC to become insolvent.⁷ Second, the rule will cause customers to lose service who have no alternative provider.⁸

WCC provides convincing evidence that operation and implementation of 54.307(e)'s flash cut to \$3,000 annual federal support per line will cause it to become insolvent. WCC obtained

² Report and Order and Further Notice of Proposed Rulemaking In the Matter of Connect America Fund, WC Docket No. 10-90; A National Broadband Plan for Our Future, GN Docket No. 09-51; Establishing Just and Reasonable Rates for Local Exchange Carriers, WC Docket No. 07-135; High-Cost Universal Service Support, WC Docket No. 05-337; Developing an Unified Intercarrier Compensation Regime, CC Docket No. 01-92; Federal-State Joint Board on Universal Service, CC Docket No. 96-45; Lifeline and Link-Up, WC Docket No. 03-109; and Universal Service Reform – Mobility Fund, WT Docket No. 10-208, released November 18, 2011. (*ICC/USF Order*)

³ WCC Petition at 2

⁴ *Id*

⁵ *Id* at 3

⁶ *ICC/USF Order* at 539-544

⁷ *Id* at 540

⁸ *Id*

CETC status from the RCA in 2008, embarked on a construction program to bring much-needed services to the Adak area, and reasonably assumed federal support would remain available for serving this highest of high cost areas well into the future. Now it finds itself with six short weeks to react to an 84% loss in support. Very few communications companies could withstand a flash cut reduction of support of the magnitude WCC is facing, let alone one that made a commitment to the FCC and RCA to serve one of the highest cost areas in the United States. As a result of losing over \$100,000 in annual support almost immediately upon release of the ICC/USF Order, WCC, not surprisingly, estimates that it will be forced to cease operations in less than 7 weeks.⁹ It is worth mentioning at this point that upon learning of the Commission's determination in the ICC/USF Order to flash-cut portions of 54.307, WCC estimated it had six months in which to attempt to address this substantial problem before being forced to cease operations. WCC has taken all steps necessary to obtain a waiver, but it is now the middle of May and, realistically, no relief is yet in sight. The Commission should take into account these types of considerations and adopt more reasonable standards for CETCs in situations similar to WCC's.

WCC also demonstrates that without the waiver sought and if it is forced to cease operations, customers without a wireless or wireline communications service alternative will lose service.¹⁰ These customers include businesses and other entities that provide vital services – Marine Exchange of Alaska, researchers working for the USGS Volcano Observatory, and various subsistence hunters and fishermen.¹¹ These are, or should be, the very types of customers for which WCC was granted CETC designation to serve, and service to which high cost funding is designed to support. These, and many more, customers will be the real casualty of the Commission's actions; thus, it is up to the Commission to correct what must have been an unintended consequence of its decision to flash-cut support to \$3,000 per line for CETCs such as WCC. The Commission could not have intended for such customers to completely lose vital voice services, while at the same time saying all Americans should have access to quality broadband services at reasonable rates.

⁹ See WCC Ex Parte Notice and Supplement to WCC Petition, filed May 4, 2012

¹⁰ WCC Petition at 6-7

¹¹ *Id* at 7

II. WWC's CETC Designation

On December 3, 2008, the RCA designated WCC a CETC for the purposes of receiving federal and state universal service support.¹² As the Commission is well aware, grant of CETC status is conditioned upon the prospective CETC meeting several requirements as spelled out in the Commission's rules and in the Telecommunications Act of 1996.¹³ According to these conditions, WCC is to, among other things, provide the supported telecommunications services throughout its defined service area, and demonstrate it is capable of and committed to providing the nine basic services required by the FCC. Furthermore, ETCs in Alaska are designated and operate pursuant to administrative regulations.¹⁴

Without securing the relief requested in its petition, WCC will clearly be noncompliant with Commission rules, Alaska Administrative Regulations, and one or more RCA orders. If its support reduction is allowed to stand and WCC is forced to cease operations, its commitment, and associated receipt of support for three years, will be nullified through no fault of its own. WCC will no longer be able to provide the supported services throughout its designated area, cannot possibly remain capable of providing the nine supported services. In addition, WCC's ability to "provide service on a timely basis to requesting customers throughout the common carrier's eligible telecommunications carrier service area using its own facilities..."¹⁵, will be made impossible, and its explanation as to "a detailed description of how universal service support will be used..."¹⁶ will now be meaningless.¹⁷ Once again, the Commission's actions have consequences beyond its stated intent of "rationalizing" federal support programs; in this case, the Commission is directly causing WCC to be in conflict with state regulations and regulatory decisions.

¹² See RCA Order No. 2 in Docket U-08-67 (attached to WCC April 19, 2012 Ex Parte filing)

¹³ 47 U.S.C §254(e)

¹⁴ 3 AAC 53.400 - 499

¹⁵ See 3 AAC 53.410(a)(7)(A)

¹⁶ 3 AAC 53.410(a)(10)

¹⁷ While under the operation of 54.307(e) WCC will technically receive some federal USF, as demonstrated in WCC's petition, such a support level will not be sufficient to allow continuing service to customers, leaving unanswered the question of how the reduced level of support will be used by a company being made insolvent through no fault of its own.

III. WCC's Proposed Solutions are Reasonable and Should be Adopted Immediately

WCC has offered two options for the Commission to consider in addressing the issues raised in its petition. In recognizing the significant slash in support could be addressed by action of the Commission's Mobility Phase II funding process, WCC asks for a limited waiver of 54.307(e) until such funds are distributed.¹⁸ Furthermore, WCC requests a limited amount of support over what would be allowed by operation of 54.307(e) and that is necessary for it to cover its operating expenses relating to areas it is serving today. In addition, WCC, after discussing its petition with Commission staff, submitted that a simpler option would be to grant it "a full waiver of the \$3,000 cap for two years...applied retroactively to January 1, 2012."¹⁹

Either of WCC's options is reasonable and should be granted without delay. The vital issue in this case is timing – WCC is working against the clock and, without immediate action by the Commission, its customers will lose vital communications services and will, in some instances, have no alternative provider to cover the loss.

IV. Conclusion

WCC has provided the evidence necessary for the Commission to act and grant its Petition for Waiver of 47 CFR 54.307(e). Furthermore, the Commission must act immediately in order to avoid the very real possibility that WCC will have to cease operations and its customers, some of whom have no alternative provider to fall back on, will lose access to vital communications services. WCC made commitments to the RCA, via its CETC designation, that will, in absence of a reasonable and sufficient level of support, be impossible to meet. In the end, it is WCC's customers that will suffer as a result of the Commission's ill-advised decision to flash-cut support reductions of the magnitude faced by WCC – support that has made communications services possible for one of the most difficult to serve areas in the United States.

¹⁸ WCC Petition at 24-25

¹⁹ WCC May 4, 2012 Ex Parte at 2

Respectfully Submitted,

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